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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-300

THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO, FRANK T. BARR, et al., Real Parties in Interest,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO

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Real Parties in Interest, Frank T. Barr, et al., respectfully answer the Petition for Certiorari in the Supreme Court as follows:

COUNTER STATEMENT OF QUESTIONS PRESENTED

When a non-resident religious corporation is sued in a state court for alleged breach of contract, fraud and statutory violations, and contests *in personam* jurisdiction:

1. **Do the First and Fourteenth Amendments require the court to accept the corporation's characterization of its function and contacts with the state, and bar the court from considering all contrary evidence?**

2. **Do the First and Fourteenth Amendments require that there be a direct connection between the corporation's presence in the state and the cause of action in addition to systematic and wide ranging contacts sufficient to satisfy the long established "minimum contacts" standard of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)?**

3. **Is the due process clause of the Fourteenth Amendment, as interpreted by *International Shoe*, violated by the state's exercise of jurisdiction over the corporation which, *inter alia*, collects approximately $2 million per year from, conducts training seminars in, has employees who regularly travel to, and pays the salaries and expenses of church employees in, the state?**

STATEMENT OF THE CASE

This is an action in the Superior Court, San Diego County, California, on behalf of Real Parties in Interest, some 1,950 present and former residents (the "Plaintiffs") of fourteen retirement homes and convalescent hospitals sponsored by The United Methodist Church ("UMC") and known as Pacific Homes Corporation ("Pacific Homes"). The defendants include, *inter alia*, UMC, The General Council on Finance and Administration of The United Methodist Church ("Petitioner" or "GCFA"), and The Pacific and Southwest Annual Conference of The United Methodist Church ("PSWAC"), collectively the "Church Defendants." The action alleges that Pacific Homes was the alter ego, agency and instrumentality of the Church Defendants and seeks relief for alleged breach of contract, fraud and statutory violations. App. Ex. No. C.[1/]

The Plaintiffs are parties to life care contracts with Pacific Homes entitling them to life care, including medical, nursing and convalescent care, accommodations and meal service. Many Plaintiffs pre-paid their life care contracts, some in amounts as high as $150,000, and were entitled to life time care at no additional cost. The remaining Plaintiffs' contracts required fixed monthly payments for life that were guaranteed never to increase, or provided for limited increases (subject to a ceiling) based upon inflation. Plaintiffs'

[1/] All record references herein are to the record as transmitted to the California Court of Appeal and the California Supreme Court. Plaintiffs note that GCFA's Petition contains virtually no record references to support its self-serving and grossly distorted presentation of the evidence in the record in this proceeding.

contracts have been breached by Pacific Homes, and virtually all Plaintiffs are now required to make monthly payments substantially greater than those required by their respective contracts in order to provide operating funds to Pacific Homes and avoid its liquidation.[2]/

GCFA filed a motion to quash service of process for lack of *in personam* jurisdiction which was denied by the Superior Court on March 20, 1978. App. Ex. No. A. The California Court of Appeal and the California Supreme Court thereafter refused to disturb the Superior Court's ruling.[3]/ On September 5, 1978, GCFA answered the complaint.

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[2]/ On February 18, 1977, Pacific Homes sought protection under Chapter XI of the Bankruptcy Act in the United States District Court for the Central District of California and suits against it have been stayed. On December 9, 1977, Pacific Homes entered into a Chapter X proceeding and it is now under the control of Richard E. Matthews, the Chapter X Trustee.

[3]/ There is a serious question as to whether the decision of the Superior Court challenged by GCFA is a final decision within 28 U.S.C. §1257. No California case holds that a defendant who, like GCFA, objects to jurisdiction *and unsuccessfully seeks all available appellate review* (by way of the California statutory mandate procedure) of the decision denying its jurisdictional objections, waives its jurisdictional objection by thereafter answering. In *McCorkle v. City of Los Angeles*, 70 Cal.2d 252, 449 P.2d 453, 74 Cal.Rptr. 389 (1969), the defendant objected to jurisdiction of the trial court, *but did not seek review of that decision via California's statutory mandate procedure. Id.* at 256. Thus, in *McCorkle* the defendant had a choice - answer or seek a writ of mandate - and chose to answer, thereby voluntarily waiving its jurisdictional objection. GCFA sought review of the trial court's decision via mandate and can argue that it has not therefore waived its objection. By asking this Court to review the decision of the Superior Court at this time, GCFA is, in effect, seeking an advisory opinion from this Court on a matter of California law.

The evidence before the Superior Court consisted of thousands of pages of documentary materials and numerous deposition transcripts presented by Plaintiffs as well as affidavits of experts and documents presented by GCFA. The evidence demonstrated that GCFA "provides property, investment, and management functions for the general Church." *The Book of Discipline of the United Methodist Church* (hereinafter "*BOD/UMC*"), Glossary at 600, App. Ex. No. H (Ex. A).[4]/ GCFA is accountable[5]/ to UMC through UMC's General Conference in all matters relating to the receiving, disbursing and reporting of general church funds. *BOD/UMC*, ¶906 at 333. GCFA is amenable[6]/ to the General Conference. *BOD/UMC*, ¶904 at 330. GCFA has the responsibility to "receive, collect, and hold in trust for the benefit of The United Methodist Church . . . any and all donations, bequests, and devises of any kind, real or personal, that may be given . . . or conveyed to the United Methodist

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[4]/ The quoted portion of the Glossary of the *BOD/UMC* is a synopsis of approximately nine pages of textual material appearing at 333-341. *BOD/UMC* ¶906-7 at 333-41. The Glossary is a "guide to" UMC's law. *BOD/UMC*, Glossary at 591.

[5]/ "*Accountability.* The requirement upon an organized structural unit in The United Methodist Church to report, explain, or justify its action(s) to another unit in the church structure." *BOD/UMC*, Glossary at 591.

[6]/ "*Amenability.* The requirement upon an organized unit in The United Methodist Church to anser to, act under instruction of, agree with, yield to, or submit to another unit in the church structure. *It connotes legal responsibility.* On the general level, all of the generl agencies that have been constituted by the General Conference are amenable to the General Conference, except as otherwise provided." *BOD/UMC*, Glossary at 592 (emphasis added).

Church as such. . . ." *BOD/UMC*, ¶906(7) at 336. In applying to the Internal Revenue Service for a "group [tax] exemption to be granted in the name of The United Methodist Church and its affiliated organizations," GCFA represented that it "functions as the central treasury and fiscal agent of the United Methodist Church." App. Ex. No. M (Ex. No. 3 at 1, 2, 6).[7/]

GCFA's control of the finances of UMC is broad and complete and includes the following:

1. GCFA requires "all agencies receiving general church funds to follow uniform accounting classifications and procedures for reporting" and an "annual audit of all treasuries receiving general church funds, following such auditing procedures as [GCFA] may specify." *BOD/UMC*, ¶906(4) at 335.

2. All agencies receiving general church funds must submit annual budgets to GCFA in such form as GCFA requires. *BOD/UMC*, ¶906(4) at 335-336.

3. GCFA ensures "that expenditures of agencies receiving general church funds do not exceed receipts and available reserves, and this within an approved budget." *BOD/UMC*, ¶906(3) at 335.

7/ Thus, while the Superior Court incorrectly attributed the statement "the GCFA operates 'as the central treasury and fiscal agent of the United Methodist Church' " to the Methodist 'Book of discipline,' " the statement is unquestionably that of GCFA, and therefore the Superior Court's finding is properly supported by the evidence.

4. GCFA establishes "policy governing the functions of banking, payroll, purchasing, accounting and budget control for all agencies receiving general church funds." *BOD/UMC*, ¶906(5) at 336.

5. A GCFA committee prescribes all official forms and records for "use in the Church." *BOD/UMC*, ¶905(4)(c) at 332.

6. GCFA must "develop investment policies for . . . and review . . . performance of all permanent funds of all agencies receiving general church funds." *BOD/UMC*, ¶906(6) at 336.

7. "[A]gencies receiving general church funds shall be *fiscally accountable* to the [GCFA]." *BOD/UMC*, ¶906 at 333.

8. GCFA requires every general church agency "to follow uniform policies and practices in the employment and remuneration of personnel. . . ." *BOD/UMC*, ¶907(7)(a) at 339.

9. GCFA must "withhold approval of the entire budget of any agency of any church-related institution receiving general church funds" until it receives a written certification that the entity "has established and has complied with a policy" on non-discrimination in employment and is, "insofar as possible, purchasing goods and services from vendors who are in compliance with such policies. . . ." *BOD/UMC*, ¶910 at 342-343. If GCFA determines that "an agency or institution receiving general church funds is not in compliance with the equal employment opportunity policies and the salary and employee benefit schedules established by [a committee of GCFA]," GCFA has the authority to suspend future funding of such agency. *BOD/UMC*, ¶907(7)(d) at 340.

10. GCFA "institute[s], manage[s], and maintain[s] a churchwide insurance program for the protection of United Methodist Church property and persons, covering all areas involving the interest of The United Methodist Church. . . ." *BOD/UMC*, ¶908(13) at 341.

11. GCFA establishes "policy governing the leasing, sale, rental, renovation, or purchase of property by a general board or agency." *BOD/UMC*, ¶907(1) at 337-338. Any general board or agency must submit plans "to acquire or sell real estate or erect a building or enter into a lease" to GCFA, which must determine if such action is "in the best interest of The United Methodist Church." *Id.* GCFA can disapprove such a transaction. *Id.*

12. GCFA exercises "on behalf of the General Conference a property management function, by holding the title to and managing real property for the use of general agencies of the Church." *BOD/UMC*, ¶907(3) at 338.

13. GCFA determines "policy for ownership, lease, and use of computers by general church agencies and . . . formulate[s] policy governing the data-processing function carried out by [such] agencies." *BOD/UMC*, ¶907(6) at 339.

14. GCFA must "withhold approval of any item or items in the budget or budgets receiving general church funds which in its judgment represent unnecessary duplication of administrative function. . . ." *BOD/UMC*, ¶910(2) at 343.

15. Any "agency of The United Methodist Church proposing to borrow funds" in excess of stated amounts or for more than 12 months must obtain the approval of GCFA. *BOD/UMC*, ¶910(3) at 343.

16. No "general board, cause, agency, or institution or any organization, group, officer, or individual of The United Methodist Church or to which The United Methodist Church contributes financial support" may make a special churchwide appeal absent authorization from GCFA. *BOD/UMC*, ¶910(4) at 344.

17. GCFA is "responsible for ensuring that no board, agency, committee, commission, or council shall give funds to any 'gay' caucus or group, or otherwise use such funds to promote the acceptance of homosexuality." *BOD/UMC*, ¶907(13) at 337. GCFA has "the right to stop such expenditures." *Id.*

The *BOD/UMC* demonstrates that GCFA is what its name suggests - the financial nerve center of UMC.

GCFA has a continuous, significant and economically beneficial presence in California. The evidence submitted to the Superior Court demonstrated that GCFA:

a) Collected, in regular monthly installments, $1.938, $1.982 and $2.319 million in the years 1975, 1976 and 1977 respectively from subordinate units of UMC in California (cumulative billings for 1974-78 were $10.8 million). App. Ex. No. S (Ex. Nos. 76-81).

b) Has employees who, in the course of GCFA's business, regularly travel to California, correspond with California residents, conduct training seminars in California and have telephone conversations with California residents. App. Ex. No. P at 161-188; App. Ex. No. 15 at 161-168; App. Ex. No. Q (Ex. Nos. 61-123).

c) Pays salaries and expenses in excess of $100,000.00 per year to UMC Bishops residing in California. App. Ex.

No. M (Ex. No. 2 at 154-155); App. Ex. No. M (Ex. No. 2 at 154-155); App. Ex. No. N at 126; App. Ex. No. Q (Ex. No. 124 at 7-10, 12).

d) Provides computer services to California units of UMC which have generated revenues from California in excess of $50,000.00 since mid-1975. App. Ex. No. Q (Ex. Nos. 39, 40, 42); App. Ex. No. 14 at 41-44.

e) Prepares and distributes financial and statistical reporting forms to California UMC units, which units are required to complete and return them to GCFA. App. Ex. No. 16 (Ex. Nos. 3-8 & 10).

f) Administers a church-wide insurance program covering numerous California churches and receives assignments of policy dividends from such churches. App. Ex. No. M (Ex. No. 2 at 19, 72); App. Ex. No. N at 124; App. Ex. No. Q (Ex. Nos. 68, 69, 77, 82 & 109); App. Ex. No. 13 (Ex. Nos. 1-10).

g) Has, and has had, members, directors and officers who reside and perform their respective functions for GCFA in California. App. Ex. No. Q (Ex. No. 124 at 102); App. Ex. No. N at 59-60, 66-67; App. Ex. Nos S (Ex. No. 13 at 97-98).

GCFA challenges the Superior Court decision on three grounds. First, GCFA contends that the Superior Court violated the First and Fourteenth Amendments in basing its assertion of jursidiction on Plaintiffs' characterization of GCFA's role in the structure of UMC and rejecting contrary testimony of church officials and experts. Second, GCFA

contends that use of the "minimum contracts" standard of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), in determining jurisdiction over a nonresident religious organization violates the First and Fourteenth Amendments. Third, GCFA argues that, even under the traditional minimum contacts analysis, its connection with the State of California is too attenuated under the standards implicit in the Due Process Clause of the Fourteenth Amendment to justify burdening it with defending this action in California.

Upon filing its Petition for Certiorari, GCFA sought a stay of the proceeding below from Justice Rehnquist. Justice Rehnquist denied the requested stay holding that GCFA's argument that the Superior Court could not make a conclusion contrary to GCFA's assertions as to its function in the UMC was "plainly . . . wrong," that its claim of entitlement to a special and restrictive jurisdictional test was "untenable" and that GCFA had not demonstrated that the Superior Court failed to properly apply the due process standards of *International Shoe*. *The General Council on Finance and Administration of The United Methodist Church v. Superior Court of California, County of San Diego*, ___U.S. ___. (No. A-200, Sept. 1, 1978, Slip Opinion at 4-5) (Rehnquist, J., in chambers).

ARGUMENT

I.

THE COURT BELOW DID NOT VIOLATE THE FIRST AND FOURTEENTH AMENDMENTS BY WEIGHING THE EVIDENCE BEFORE IT AND CONCLUDING THAT GCFA IS THE CENTRAL TREASURY AND FISCAL AGENT OF UMC AND DOES BUSINESS IN CALIFORNIA.

The linchpin of GCFA's challenge to the Superior Court's order is its assertion that the Superior Court based its ruling on documentary evidence presented by Plaintiffs which "*was objected to by GCFA* but was never ruled upon by the trial judge." GCFA Petition at 10. Plaintiffs have pointed out the falsity of this statement in three appellate briefs. GCFA's counsel actually said:

> Secondly, your Honor, I would note that you have been presented with a good deal of material. I think, had you received a letter from Mr. Lerach concerning the situation timewise, so far as the depositions are concerned, other documents, and *we would like to move forward but we do not waive any objection to the proper authentication of any of the documents.*

App. Ex. No. Y at 4 (emphasis added).

Far from objecting to the Superior Court's consideration of any of the documentary evidence filed by Plaintiffs, GCFA merely preserved its right to object and invited the Superior Court to "move forward" with the proceedings. GCFA never made any objection to the receipt of any evidence offered by

Plaintiffs, and the record clearly reflects the absence of objection.[8]/ GCFA thus urges this Court to review a decision which GCFA asserts was based on improperly considered evidence even though GCFA did not object to the receipt of that evidence.[9]/

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[8]/ California law requires that an objection to proffered evidence be "timely made and so stated as to make clear the specific ground of the objection. . . ." Cal. Evid. Code §353(a) (West 1968). Unless objection is properly made to the evidence in the trial court, the appellate court will not review the admissibility of the evidence. *Id.* Failure to object at all obviously waives any defect. *Perry v. McLaughlin,* 212 Cal. 1, 6, 297 P. 554 (1931); *Trigueiro v. Skow,* 24 Cal.App.2d 253, 256, 74 P.2d 836 (1937); B. Witkin, *Evidence* §1285 at 1188-89 (1966).

[9]/ The Superior Court's decision dismissing UMC from the litigation as not being a suable entity is on appeal to the California Court of Appeal. A recent decision of a federal court in *Trigg v. Pacific Methodist Investment Fund,* No. 78-0198-S (S.D. Cal. August 15, 1978) casts grave doubt on the validity of GCFA's contentions in its Petition. *Trigg* is a civil action alleging violations of the federal and California securities laws brought on behalf of the purchasers of $5 million in bonds issued to aid Pacific Homes. GCFA and UMC moved to dismiss the *Trigg* action for lack of jurisdiction, making the same arguments and relying upon substantially the same evidence as presented in this action. The Church Defendants objected to all of Plaintiffs' evidence, which objections the court termed "vexatious and harassing" in overruling almost all of them. On August 15, 1978, the federal court denied the Church Defendants' motions. A copy of the ruling and order of the District Court are attached as Exhibits 2 and 3 respectively to the Lerach Affidavit, submitted to Mr. Justice Rehnquist in opposition to GCFA's stay motion.

With respect to the function of GCFA vis-a-vis UMC, the federal court ruled:

GCFA also seeks review of its claim that its constitutional rights were violated when the Superior Court rejected GCFA's version of its role within UMC and accepted a "deviant version . . . urged upon the court in arguments by strangers to the denomination unaided by expert testimony or other competent evidence." GCFA Petition at 4. However cleverly phrased, the gravamen of GCFA's arguments is that (i) the only permissible interpretation of the objective evidence of the scope and nature of GCFA's temporal activities is that view advanced by GCFA; and (ii) the only persons who may evaluate the evidence are those "experts" chosen by GCFA.

Footnote 9 continued

> A good deal of discussion has taken place in the papers filed, and in argument this morning, with regard to the function of the General Council on Finance and Administration, and it has been pointed out that this is a very active body, or agency, entity, or whatever it might be called, corporation, evidently, *which exercises a permeating administration and control of certain aspects of finances of the Methodist hierarchical structure.* It is true, evidently, as stated by Mr. Witwer, that it administers only approximately five or five and a half percent of the total collections or givings obtained at the local level, but when that small percentage is translated into dollars, *it comes to some sixty or sixty-five million dollars, a very substantial sum, and certainly as to that fund, or those funds, the General Council on Finance and Administration is the fiscal arm of the United Methodist Church.*

Reporter's Transcript of Proceedings at 16, *Trigg v. Pacific Methodist Investment Fund,* (S.D. Cal. Aug. 15, 1978) (emphasis added).

Of course, GCFA would have won below if only its version of the evidence was presented and its interpretation of the facts had been accepted. However, as customary in our legal system, Plaintiffs presented countervailing evidence which supported their assertions. The Superior Court weighed the evidence offered by Plaintiffs against the evidence offered by GCFA and resolved the factual dispute in favor of Plaintiffs.

In any event, the exercise of jurisdiction over GCFA does not turn on the structure of UMC or on GCFA's role therein. Rather, it merely requires a factual determination of whether GCFA has minimum contacts with California. The polity of UMC is irrelevant to this factual issue. Contrary to GCFA's assertion that the Superior Court rewrote the religious polity of UMC in entering the challenged order, the Superior Court actually made a *factual determination* based upon the evidence submitted to it of GCFA's substantial, ongoing and beneficial contacts with California.

GCFA has consistently sought to convert its adversarial position in this litigation into a religious rite and thereby to preclude inquiry into, or evaluation of, evidence other than the evidence it prefers and the declarations of its own "experts." No rule of law says that merely because those in control of litigation strategy in a particular suit involving GCFA assert that GCFA is not the central treasury and fiscal agent of UMC and has no ongoing contacts with California, that such assertions are binding upon the civil courts of our land. The law is directly to the contrary. Justice Rehnquist so recognized in denying GCFA's motion for a stay, stating:

In my view, applicant plainly is wrong when it asserts that the First and Fourteenth Amendments prevent a civil court from independently examining, and making the ultimate decision regarding, the structure and actual operation of a hierarchical church and its constitutent units in an action such as this. There are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes. See *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich, supra.* But this Court never has suggested that those constraints similarly apply outside the context of such intra-organization disputes. Thus, *Serbian Orthodox Diocese* and the other cases cited by applicant are not in point. Those cases are premised on a perceived danger that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. *Id.*, at 709-710. Such considerations are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract and statutory violations are alleged. As the Court stated in another context, "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940). Nor is it entirely clear that the Superior Court's

> determination of the jurisdictional question was based upon its interpretation of Methodist polity; it is equally likely that the court's decision was founded on the related but separate issue of applicant's contacts with the State of California.

The General Council on Finance and Administration of The United Methodist Church v. Superior Court of California, County of San Diego, ___ U.S. ___ (No. A-200, Sept. 1, 1978, Slip Opinion at 4-5) (Rehnquist, J., in chambers).

A court's determination of the organizational structure of a religious body poses no First Amendment problem in an action by third parties against a religious organization for tortious conduct, breach of contract or statutory violations arising fro a the temporal or secular activities of the organization.[10/] While there are limitations on the extent to which civil courts can inquire into and determine purely ecclesiastical matters, it is clear that the evidence submitted to the Superior Court by Plaintiffs was evidence that the court could properly consider. In *Presbyterian Church in the United States v. Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), this Court noted that the civil courts have "no role" in

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10/ This is not a dispute between units of UMC, a suit seeking review of any internal church ruling, a suit by a governmental agency attempting to impose any regulation upon UMC, or a suit affecting the manner in which Methodists exercise their beliefs. No reported case has been cited, and none has been found, where a suit for fraud or breach of contract by third parties against a religious organization was barred by the First Amendment. Every case cited by GCFA involved either an internal church dispute or the attempt of a governmental entity to regulate a church.

determining *ecclesiastical questions* in the process of resolving internal property disputes. However, it went on to authorize judicial resolution of internal property disputes, provided it could be done by the application of "neutral principles of law," and stated that such an approach does not violate the First Amendment. *Id.* at 449. *See also Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940) ("Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit fraud upon the public.").[11/]

11/ In *Securities and Exchange Commission v. World Radio Mission, Inc.*, 544 F.2d 535 (1st Cir. 1976), the defendant religious organization claimed that its allegedly fraudulent action in connection with the sale of securities to the public was entitled to First Amendment protection. The court rejected this claim.

As Justice Traynor has stated:

> Religious organizations engage in various activities such as founding colonies, operating libraries, schools, wineries, hospitals, farms, industrial and other commercial enterprises. *Conceivably they may engage in virtually any worldly activity, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe.* If they were given such freedom, the direct consequence of their activities would be a diminution of the state's power to protect the public health and safety and the general welfare. With that power so easily diminished there would soon cease to be that separation of church and state underlying the constitutional concept of religious liberty.

The Gospel Army v. City of Los Angeles, 27 Cal.2d 232, 245, 163 P.2d 704 (1945) (emphasis added). Likewise

The true thrust of GCFA's constitutional arguments is that GCFA, as part of a "world wide religious organization," has immunity against any suit against it for fraud, breach of contract or statutory violations and that it cannot be held answerable for such conduct by the courts *except on its terms*. This is not the law.

Footnote 11 continued

> *. . . the belief "that any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment" has been consistently repudiated. . . .*
>
> * * *
>
> *We have closely considered the Church's contention that as a democratic, autonomous, separatist and congregatinal Baptist Church, considering itself free from any "human authority whether civil or ecclesiastical," it merits special concern of the First Amendment, even in the area of property rights. The contention is found invalid. . . .* "As long as civil or property rights are involved, the courts will entertain jurisdication of controversies in religious bodies although some ecclesiastical matters are incidentally involved."

In Re Metropolitan Baptist Church of Richmond, Inc., 48 Cal.App.3d 850, 858-60, 121 Cal.Rptr. 899 (1975) (emphasis added). Contrary to GCFA's assertions that the Superior Court's decision disestablishes religion, for this Court to create a preferred status for religious organizations in ordinary civil litigation would be tantamount to the establishment of religion. *Abington School District v. Schemp*, 374 U.S. 203 (1963).

The United States Court of Appeals for the Fifth Circuit recently rejected a broad free exercise of religion defense in the case of *Brown v. Dade Christian Schools, Inc.*, 556 F.2d 310 (5th Cir. 1977), *cert. denied* ___ U.S. ___ (February 28, 1978). The defendant sectarian school, located on the property of and receiving subsidies from a Baptist Church, contended that its members "held a religious belief that socialization of the races would lead to racial inter-marriage, and that this belief, sanctioned by the Free Exercise Clause. . . ." protected its segregationalist enrollment policy. *Id.* at 311.

In the course of the Fifth Circuit's opinion upholding the trial court's finding that the segregation policy was not part of the exercise of religion, the court stated:

> In such a situation, the only practical course open to a Court is to examine the corporate beliefs of the institution involved, as adopted or promulgated or carried forward as an institutional concept. *To do otherwise would allow the institution to pick and choose which of its members' potentially conflicting beliefs it wished to assert at any given time. . . .*
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> * * *
>
> When the lawfulness of an activity of any such institution is in question, the focus of the inquiry must be upon the basis for the institution's activity. Whether it be the troop's policy for the award of merit badges, the hospital's requirements for staff privileges, or the college's admission principles, the basis is that particular *institution's* basis. *Whether or not it is the exercise of religion or simply a policy of the institution not presenting constitutional issues is a question of fact.*

Id. at 313-314 (emphasis added, except to "institution's").[12/]

Thus, the Fifth Circuit, *en banc*, made clear that not every proclamation of beliefs by a religious body entitles the body to bar judicial inquiry into the purported beliefs. The decision also makes clear that a court can reach a decision contrary to the position of the body asserting such beliefs without fear of violating the Establishment Clause.

The First Amendment gives to religious organizations neither the right to "pick and choose" (*Brown, supra* at 313-314) what evidence amounting to "neutral principles" can be submitted to courts nor the right to cloak whatever position it chooses to take in litigation in the garb of protected religious freedom. A court may properly look to all the evidence and make a factual determination; it is not bound by the First Amendment to accept the religious body's views.

GCFA's attempt to induce this Court to grant certiorari because this action "is without precedent in Anglo-American jurisprudence" (GCFA Petition at 6) is unwarranted.

12/ Plaintiffs recognize that the issue before the *Brown* Court was emotionally charged and that the Court was closely divided. The issue here, however, does not parallel that in *Brown;* it is whether a religious body may avoid answering for alleged tortious conduct and breach of contract in California merely by claiming that it had insufficient contacts with California and is not in fact the central treasury and fiscal agent of UMC.

Religious denominations, including UMC, have previously been sued as such. *Presbyterian Church in the United States v. Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 150 Ind.App. 574, 276 N.E.2d 916 (1971). GCFA's rhetoric aside, there is nothing unprecedented about this case.

II.

THE FIRST AND FOURTEENTH AMENDMENTS DO NOT REQUIRE A STATE COURT TO APPLY A SPECIAL AND RESTRICTIVE JURISDICTIONAL TEST IN DETERMINING WHETHER NON-RESIDENT RELIGIOUS CORPORATIONS ARE SUBJECT TO THE STATE'S JURISDICTION.

GCFA has yet to cite any authority to support its novel proposition that it, as a corporation with religious affiliations, is entitled to a special and restrictive jurisdictional test when sued in a state other than Illinois.[13/]

13/ The only reported case concerning the exercise of long arm jurisdiction over a non-profit religious corporation is *Barnstone v. Congregation Am Echad*, 514 F.2d 286 (5th Cir. 1978). In *Barnstone*, a breach of contract action, the Fifth Circuit applied the usual minimum contacts test to determine the jurisdiction of a federal district court in Texas over a non-profit religious corporation registered and located in Maine. No claim of entitlement to a special test was made by the religious corporation.

In denying GCFA's motion for stay, Justice Rehnquist stated:

> Likewise untenable, in my view, is applicant's claim that the First and Fourteenth Amendments somehow forbid resort to traditional minimum contacts analysis in determining the existence of *in personam* jurisdiction over a defendant that is affiliated with an organized religion. Not surprisingly, applicant has failed to cite any authority in support of this novel proposition.

The General Council on Finance and Administration of The United Methodist Church v. Superior Court of California, County of San Diego, ___ U.S. ___ (No. A-200, Sept. 1, 1978, Slip Opinion at 5) (Rehnquist, J., in chambers).

In *Sipple v. Des Moines Register and Tribune Co.*, 82 Cal.App.3d 143, ___ Cal. Rptr. ___ (1978), the court rejected the argument of out of state newspapers which claimed a "special preference" or "special privilege" under the First Amendment concerning the application of California's long arm statute to them. Relying on *First National Bank of Boston v. Bellotti*, ___ U.S. ___, 98 S.Ct. 1407 (1978), the court found that the First Amendment *"fails to give special protection from jurisdiction to defendants whose tortious acts performed out of the state arise from exercise of rights arguably protected by the First Amendment." Id.* at 149 (emphasis added). While GCFA's claim for special preference in this action is phrased in terms of religious liberty, it is legally indistinguishable from the claim raised by the defendants in *Sipple* and is equally meritless.

To establish a rule of constitutional import that religious organizations in ordinary civil litigation are entitled to a jurisdictional test applicable only to such organizations and more restrictiye than that generally applied under the *Internatinal Shoe* doctrine would grant such organizations a preferred status which itself would amount to the establishment of religion and offend the First Amendment. *Abington School District v. Schemp, supra.*

III.

GIVEN GCFA'S SUBSTANTIAL ONGOING CONTACTS WITH CALIFORNIA, THE SUPERIOR COURT CORRECTLY HELD THAT IT COULD, CONSISTENT WITH THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, EXERCISE JURISDICTION OVER GCFA.

GCFA's attempt to argue that its contacts with California were not sufficient to permit the exercise of jurisdiction over it under the principles of *International Shoe Co. v. Washington, supra,* and *Hanson v. Denckla,* 357 U.S. 235 (1958), raises no issue of constitutional significance. There is no reason to believe, and GCFA does not contend, that the Superior Court applied an incorrect legal standard in this regard. GCFA argues only that the evidence does not support the Superior Court's conclusion that it does business in California. Such questions depend upon the particular facts of each case. *Kulko v. Superior Court,* 436 U.S. ___ (May 15, 1978). Only a marked departure from established law would justify certiorari in these circumstances. No such departure is present since the Superior Court's conclusion that GCFA was doing business in California is supported by overwhelming evidence.

As the central treasury of UMC, GCFA is the repository of funds collected from local UMC churches throughout the world - including California. GCFA received $60,185,177.79 during 1976, and $233,398,172.93 during 1973-1976, from local UMC churches through its collection system. App. Ex. No. M (Ex. No. 2 at 17-18).

United Methodist Churches in California forward a portion of the funds collected by them to the treasurer of one of the two Annual Conferences located in California,[14]/ which, acting as conduits, forward the funds to GCFA in Illinois. These funds are remitted on a monthly basis. App. Ex. No. 14 at 26-32. *The Annual Conference treasurer has absolutely no discretion in determining either the amount of funds to forward to GCFA or when to forward these funds.* App. Ex. No. 14 at 26; App. Ex. No. N at 71. During the three years ending with 1976 $6,239,371.53 had been received by GCFA from its California Annual Conferences.[15]/ GCFA's billings to its California Annual Conferences for 1977 and 1978 were $2,357,160 and $2,566,458 respectively. App. Ex. No. S (Ex. Nos. 47-56). The California Annual Conference treasurers file detailed monthly and annual reports with GCFA. App. Ex. No. 15 at 184-186; App. Ex. No. S (Ex. Nos. 76-81).

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[14]/ The Annual Conference is the basic administrative body in UMC, bearing responsibility for the work of UMC in a specific geographic territory. *BOD/UMC,* Glossary at 597 (citing *BOD/UMC* ¶ 36-41). PSWAC and the California-Nevada Annual Conference (CAL/NEV) are the two Annual Conferences which function in California.

[15]/ Source: GCFA monthly remittance forms for PSWAC and CAL/NEV 1975-1977, App. Ex. No. S (Ex. Nos. 76-81).

In performing its functions for UMC, GCFA has had continuous contact with and presence in California. In the recent past, 13 of GCFA's titled personnel have traveled to, been present in, and conducted business in California and 18 have had correspondence or telephonic communication with persons located in California. App. Ex. No. 15 at 161-168; App. Ex. No. P at 185, 187-189.

In 1974 and 1976 GCFA sponsored UMC meetings in San Francisco known as Western Jurisdictional Workshops. App. Ex. No. 15 at 157, 159-160. GCFA prepared workshop materials, agendas and programs, which were disseminated to the local participants for use at the workshops. *Id.* at 158. Nine members, employees and/or representatives of GCFA attended the 1974 and 1976 workshops. *Id.* at 154-155, 160-161.

As part of its work as fiscal agent for UMC, GCFA administers "[t]he General Church Insurance program" providing liability insurance to "churches, parsonages, conference centers, schools, hospitals, homes, camps and other related United Methodist facilities." App. Ex. No. M (Ex. No. 2 at 19). This program is functioning in California. App. Ex. No. N at 124; App. Ex. No. Q (Ex. Nos. 68, 69, 77, 82 & 109). Some 3,762 policies were in force at year end 1976 (App. Ex. No. M (Ex. No. 2 at 19)), insuring "[c]hurch property valued at $1,200,000,000." App. Ex. No. M. (Ex. No. 2 at 72). Numerous UMC churches in California have assigned their portion of the premium dividend to the United Methodist Insurance Trust which is administered by GCFA. App. Ex. No. 13 (Ex. Nos. 1-10).

PSWAC, and other UMC agencies in California, have a contractual understanding with GCFA whereby they utilize

data processing equipment available to GCFA, paying GCFA for such use. App. Ex. No. 14 at 42. GCFA submits invoices for these data processing services on a monthly basis to PSWAC in Los Angeles, who then pays the invoices. App. Ex. No. 14 at 42-43. Since June 1975, GCFA has, on a monthly basis, submitted its invoices to PSWAC in an amount aggregating $59,653.17, and has received payments aggregating $51,277.70. App. Ex. No. Q (Ex. Nos. 39-40); see also App. Ex. No. 14 at 42-44.

GCFA administers the "Episcopal Fund," from which it pays the annual salaries and expenses (housing, office and travel) of UMC bishops. *BOD/UMC,* ¶¶921-925 at 356-358; App. Ex. No. 15 at 172-177; App. Ex. No. N at 103. Two UMC bishops are headquartered in California. App. Ex. No. Q (Ex. No. 124 at 12); App. Ex. No. 14 at 57; App. Ex. No. N at 102. In 1976 alone, GCFA disbursed to these two California Bishops amounts aggregating $113,177 for salaries, housing allowance, office and travel expenses. App. Ex. No. M (Ex. No. 2 at 154-155); App. Ex. No. N at 126. Each year UMC Bishops prepare proposed budgets for their offices which are submitted to GCFA for approval. App. Ex. No. N at 127.

Members of GCFA (who are also it directors) have been and still are residents of California during their respective terms in office. During the present quadrennium (1977-80), four members and directors of GCFA reside in California (App. Ex. No. Q (Ex. No. 124 at 102); App. Ex. No. N at 59-60) and two of them serve as members of GCFA's Executive Committee. App. Ex. No. Q (Ex. No. 124 at 101). During the 1973-1976 quadrennium, four members of GCFA were California residents (App. Ex. No. S (Ex. No. 13 at 98)), two of them

served on GCFA's Executive Committee (*Id.* at 97) and GCFA's Recording Secretary, while a California resident, performed her duties from her home. *Id.* at 97; App. Ex. No. N at 66-67.

This record fully supports the Superior Court's conclusion that GCFA had sufficient "minimum contacts" with California to require it to defend this action in California without violating the due process clause of the Fourteenth Amendment. No error of constitutional significance occurred in this regard.

CONCLUSION

For the reasons set forth herein, GCFA's Petition for Writ of Certiorari should be denied.

Dated this 22nd day of September, 1978.

Respectfully submitted,

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